

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Connect America Fund) WC Docket No. 10-90
The Rural Digital Opportunity Fund) AU Docket No. 20-34
Auction (Auction 904))

ORDER

Adopted: May 17, 2023

Released: May 17, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants East Central Vermont Telecommunications District’s (ECFiber) petition¹ requesting a six-month waiver of the Commission’s requirement that Rural Digital Opportunity Fund auction (Auction 904) recipients obtain letters of credit (LOCs) from banks that maintain a Weiss bank safety rating of B- or better.² This waiver will allow ECFiber to maintain its letter of credit with its current bank until November 1, 2023.

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 904, an applicant must obtain a LOC issued by a qualified bank to protect the public’s funds.³ To insure the availability of funds should the Commission need to draw against an LOC, the Commission has several eligibility criteria for banks issuing LOCs.⁴ One of these requirements is that the issuing bank must maintain a Weiss bank safety rating of at least a B-. The Commission determined that Weiss provides “an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes,” and that banks with a rating of B- or higher had shown that they “offer[] good financial security and ha[ve] the resources to deal with a variety of adverse economic conditions.”⁵

3. ECFiber’s Petition. In its petition, ECFiber explains that it initially obtained LOCs from Silicon Valley Bank (SVB), which met the Commission’s requirements at the time the LOCs were

¹ Petition for Temporary Waiver, WC Docket No. 10-90, AU Docket No. 20-34 (filed Apr. 17, 2023) (ECFiber Petition).

² 47 CFR § 54.804(c)(2)(i)(B).

³ 47 CFR § 54.804(c); Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (CAF Phase II Auction Order); Rural Digital Opportunity Fund et al., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 729-35, paras. 96-112 (2020) (Rural Digital Opportunity Fund Order).

⁴ 47 CFR § 54.804(c).

⁵ CAF Phase II Auction Order, 31 FCC Rcd at 5993, para. 127.

issued.⁶ As a condition for providing the LOCs, SVB required ECFiber to purchase certificates of deposit in the amount of one year of RDOF support.⁷ After SVB was closed due to financial failure,⁸ ECFiber moved quickly to obtain new LOCs from its local bank, Mascoma Bank, which also required a purchase of certificates of deposit in the amount of one year of RDOF support.⁹ When obtaining its new LOCs, ECFiber did not realize that Mascoma Bank has a Weiss bank safety rating of C+,¹⁰ and therefore ECFiber may not rely on the Mascoma Bank LOC for the purposes of the RDOF program.

4. ECFiber wishes to: (1) cancel its existing LOC with SVB, and (2) maintain its only active LOC with Mascoma Bank, while it looks to obtain a new LOC from a bank that meets Commission requirements. To do so, ECFiber seeks a six-month waiver of the requirement that LOC issuing banks maintain a Weiss bank safety rating of at least a B- in order to obtain new LOCs from a bank that meets the Commission's requirements.¹¹ According to ECFiber, a six-month waiver would allow ECFiber to maintain its existing LOC with Mascoma Bank while it obtains a new LOC from a bank that meets the Commission's requirements. In support of its petition, ECFiber states that it has already completed significant deployment well before the RDOF deadlines,¹² and that, without a waiver, ECFiber would have significant resources tied up in the banks that issued its earlier LOCs.¹³ ECFiber also notes that a waiver would be consistent with our earlier, temporary waiver of the LOC rules to allow a support recipient to obtain new LOCs from a bank that met the Commission's requirement.¹⁴

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁵ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ We find good cause to grant ECFiber's petition and temporarily waive section 54.804(c)(2)(i)(B) of our rules until November 1, 2023. If at that time ECFiber has not obtained LOCs for all of its Auction 904 awards from a bank that meets the Commission's requirements,

⁶ *ECFiber Petition* at 2

⁷ *Id.*

⁸ See Federal Deposit Insurance Corporations, Failed Bank List, Failed Bank Information for Silicon Valley Bank, Santa Clara, CA, <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/silicon-valley.html>.

⁹ *Id.* at 3. SVB's purchaser, First-Citizens Bank & Trust Company, now holds the certificates of deposit associated with the SVB LOC.

¹⁰ See Weiss Ratings for Mascoma Bank available at <https://weissratings.com/en/bank/18013> (last visited May 17, 2023).

¹¹ *ECFiber Petition* at 4.

¹² *Id.* at 5

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 5-6, citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 22-951 (WCB Sept. 13, 2022) (Point Broadband Order).

¹⁵ 47 CFR § 1.3.

¹⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), cert. denied, 93 S.Ct. 461 (1972) (*WAIT Radio*)) (*Northeast Cellular*).

¹⁷ *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *WAIT Radio*, 418 F.2d at 1157.

we will suspend ECFiber's monthly support payments and ECFiber may be subject to additional non-compliance measures.¹⁹

6. We find that circumstances support a finding of good cause to grant the petition. ECFiber immediately sought a new LOC from Mascoma after SVB's unforeseen and sudden failure. Permitting ECFiber to continue to use Mascoma Bank's LOC will allow ECFiber to focus its resources on deploying broadband to its Auction 904 areas and will also provide additional time for ECFiber to obtain a LOC from an acceptable bank that meets our eligibility criteria. In further support of this waiver, we rely on ECFiber's substantial deployment to over 40 percent of the eligible locations in each of the states in which it was authorized to receive RDOF support.²⁰ Thus, the Commission is unlikely to need to draw on ECFiber's LOCs in the near future.

7. Granting ECFiber a temporary waiver is also consistent with our precedent. We previously issued a temporary waiver to allow Point Broadband to continue using its existing LOCs from a bank with a Weiss safety rating of C+ in order to allow Point Broadband to obtain new LOCs from a bank with an acceptable Weiss safety rating.²¹ Like ECFiber, Point Broadband had substantially deployed service in advance of relevant deadlines, and we recognized that granting a temporary waiver would allow Point Broadband to expend more of its capital on deployment efforts.²² For the same reasons, we grant ECFiber's request for a temporary waiver.²³

8. We emphasize, however, that auction support recipients must ensure that banks issuing LOCs comply with all of our eligibility rules. We rely on an independent standard to assess the stability of financial institutions because the Commission does not have the expertise to evaluate banks' financial health.²⁴

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for temporary waiver filed by ECFiber IS GRANTED.

¹⁹ See, e.g., 47 CFR §§ 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

²⁰ See *ECFiber Petition* at 5 (noting that ECFiber has already deployed service to 48 percent of its Vermont locations and 98 percent of its New Hampshire locations).

²¹ See generally *Point Broadband Order*.

²² See *id.* at 2, para. 5.

²³ Granting of this waiver will allow USAC to accept the LOCs from Mascoma Bank and terminate and return the LOCs from SVB. Terminating and returning the SVB LOCs will allow ECFiber to retrieve its certificates of deposit from SVB and use those funds to obtain LOCs from a bank that complies with the Commission's rules. Without this waiver, ECFiber would need even more of its capital to obtain a third LOC before its LOC from SVB could be terminated and returned.

²⁴ See *CAF Phase II Auction Order*, 31 FCC Rcd at 5992-93, para. 126 (noting the importance of "maintaining objective criteria that will provide sufficient assurance that letters of credit issued [to Auction support recipients] will be honored").

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau